

109TH CONGRESS  
1ST SESSION

# H. R. 3374

To provide for the uniform and timely notification of consumers whose sensitive financial personal information has been placed at risk by a breach of data security, to enhance data security safeguards, to provide appropriate consumer mitigation services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2005

Mr. LATOURETTE (for himself and Ms. HOOLEY) introduced the following bill;  
which was referred to the Committee on Financial Services

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## A BILL

To provide for the uniform and timely notification of consumers whose sensitive financial personal information has been placed at risk by a breach of data security, to enhance data security safeguards, to provide appropriate consumer mitigation services, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Consumer Notification  
5       and Financial Data Protection Act of 2005”.

1 **SEC. 2. DATA SECURITY SAFEGUARDS.**

2 Each financial institution shall have an affirmative  
3 and continuing obligation to maintain reasonable policies  
4 and procedures to protect the security and confidentiality  
5 of sensitive financial personal information of any con-  
6 sumer that is maintained or received by or on behalf of  
7 such financial institution against any unauthorized use  
8 that is reasonably likely to result in harm or substantial  
9 inconvenience to such consumer.

10 **SEC. 3. INVESTIGATION AND NOTICE TO REGULATORS AND**  
11 **LAW ENFORCEMENT IN CASE OF BREACH OF**  
12 **DATA SECURITY.**

13 (a) DUTY TO INVESTIGATE.—

14 (1) IN GENERAL.—Whenever any financial in-  
15 stitution determines or becomes aware of informa-  
16 tion that would reasonably indicate that a breach of  
17 data security may have occurred or is reasonably  
18 likely to occur, or receives notice under subsection  
19 (c), the financial institution shall immediately con-  
20 duct a reasonable investigation to—

21 (A) assess the nature and scope of the  
22 breach;

23 (B) identify the sensitive financial personal  
24 information involved; and

25 (C) determine if the breach is reasonably  
26 likely to result in harm or substantial inconven-

1           ience to any consumer to whom the information  
2           relates.

3           (2) FACTORS TO BE CONSIDERED.—In deter-  
4           mining, under paragraph (1), the likelihood that  
5           harm or substantial inconvenience may be caused to  
6           consumers, the financial institution shall consider all  
7           available relevant facts, including whether the infor-  
8           mation that was subject to the breach was  
9           unencrypted, or unredacted, or required technology  
10          to use that is not generally commercially available.

11          (b) INVESTIGATION NOTICES.—If a financial institu-  
12         tion determines after commencing an investigation under  
13         subsection (a) that a potential breach of data security may  
14         result in harm or substantial inconvenience to any con-  
15         sumer whose sensitive financial personal information was  
16         involved in such potential breach, the financial institution  
17         shall—

18                 (1) promptly notify the appropriate law enforce-  
19                 ment agencies of the breach;

20                 (2) promptly notify the institution’s functional  
21                 regulator;

22                 (3) take reasonable measures to ensure and re-  
23                 store the security and confidentiality of the sensitive  
24                 financial personal information involved in the  
25                 breach;

1           (4) take reasonable measures to prevent further  
2           unauthorized access to or disclosure of any sensitive  
3           financial personal information and to restore the in-  
4           tegrity of the data system; and

5           (5) notify as appropriate and without unreason-  
6           able delay all critical third parties—

7                   (A) whose involvement is necessary to in-  
8           vestigate the breach of data security; or

9                   (B) who will be required to undertake fur-  
10          ther action with respect to such information to  
11          protect such consumers from fraud or identity  
12          theft.

13          (c) DUTY OF FINANCIAL CONTRACTORS.—Whenever  
14          any financial institution that maintains or receives sen-  
15          sitive personal financial information for or on behalf of  
16          another party determines, or has reason to believe, that  
17          a breach of data security has occurred with respect to such  
18          information, the financial institution shall—

19                   (1) promptly notify the other party of the  
20          breach;

21                   (2) conduct a joint investigation with the other  
22          party to determine the likelihood that such informa-  
23          tion will be misused against the consumers to whom  
24          the information relates in a manner that would

1       cause harm or substantial inconvenience to such con-  
2       sumer; and

3           (3) unless the financial institution and third  
4       party determine, after conducting a reasonable in-  
5       vestigation, that it is not reasonably likely that such  
6       information will be misused to commit financial  
7       fraud against any consumer to whom any of such  
8       sensitive financial personal information relates in a  
9       manner that would cause harm or substantial incon-  
10      venience to such consumer, provide joint notice  
11      under section 4 to such consumers.

12 **SEC. 4. NOTICE TO CONSUMERS OF DATA SECURITY**  
13 **BREACH.**

14       (a) NOTICE REQUIRED.—If, after completing a rea-  
15      sonable investigation pursuant to section 3, a financial in-  
16      stitution or a financial contractor pursuant to section 3(c)  
17      becomes aware that a breach of data security is reasonably  
18      likely to have occurred, with respect to sensitive financial  
19      personal information maintained or received by or on be-  
20      half of the institution, that creates a risk of harm or sub-  
21      stantial inconvenience to consumers to whom the informa-  
22      tion relates, the financial institution shall, without unrea-  
23      sonable delay—

24           (1) provide written notice, in accordance with  
25      this section, to each consumer whose sensitive finan-

1        cial personal information was involved in the breach  
2        of data security; and

3            (2) if the financial institution determines that it  
4        is likely to be providing notice under paragraph (1)  
5        to 1,000 or more consumers for any breach of data  
6        security, provide written notice to—

7            (A) each consumer reporting agency de-  
8        scribed in section 603(p) of the Fair Credit Re-  
9        porting Act; and

10          (B) any other consumer reporting agency  
11        that the financial institution identifies, or ex-  
12        pects to identify, in the notice provided to the  
13        consumer under paragraph (1).

14        (b) CONTENT OF NOTICE.—The notice provided to  
15        any consumer under subsection (a)(1) shall include the  
16        following information in a clear and conspicuous manner:

17            (1) A description of the nature and type of in-  
18        formation that was, or is reasonably believed to have  
19        been, subject to the breach of data security.

20            (2) If known, the date, or a reasonable approxi-  
21        mation of the period of time, on or within which sen-  
22        sitive financial personal information of the consumer  
23        was, or is reasonably believed to have been, acquired  
24        by an unauthorized person.

1           (3) A description of the actions taken by the fi-  
2           nancial institution to restore the security and con-  
3           fidentiality of the data.

4           (4) A toll-free telephone number where a con-  
5           sumer whose information was subject of the breach  
6           of data security may obtain additional information  
7           the breach of data security.

8           (5) A summary of rights of consumer victims of  
9           fraud or identity theft, such as that prepared by the  
10          Federal Trade Commission under section 609(d) of  
11          the Fair Credit Reporting Act, including any addi-  
12          tional appropriate information on how the consumer  
13          may—

14                (A) obtain a copy of a consumer report  
15                free of charge in accordance with section 612 of  
16                the Fair Credit Reporting Act;

17                (B) place a fraud alert in any file relating  
18                to the consumer at a consumer reporting agen-  
19                cy under section 605A of such Act to discour-  
20                age unauthorized use; and

21                (C) contact the Federal Trade Commission  
22                for more detailed information.

23          (c) NOTICE OF IDENTITY THEFT.—If a financial in-  
24          stitution is required to provide a notice under subsection  
25          (a)(1) with respect to a breach of data security involving

1 sensitive financial personal information relating to a con-  
2 sumer (other than financial account information described  
3 in section 9(5)(A)(v)), the notice required in this section  
4 with respect to such consumer shall include information  
5 on how the consumer may obtain mitigation services free  
6 of charge in accordance with section 5.

7 (d) DELAY OF NOTICE FOR LAW ENFORCEMENT  
8 PURPOSES.—If a financial institution receives a written  
9 request, or an oral request indicating that a written re-  
10 quest will be provided, from an appropriate law enforce-  
11 ment agency indicating that providing a particular notice  
12 to any consumer under this section would impede a crimi-  
13 nal or civil investigation by that law enforcement agency,  
14 the financial institution shall delay, or in the case of a  
15 foreign law enforcement agency may delay, providing such  
16 notice until the law enforcement agency informs the finan-  
17 cial institution that such notice will no longer impede the  
18 investigation or the law enforcement agency fails to con-  
19 firm that a continued delay is necessary to avoid impeding  
20 such investigation.

21 (e) ELECTRONIC TRANSMISSION OF NOTICE.—The  
22 written notice required under this section to any consumer  
23 may be made by an electronic transmission only if—



1           (1) the consumer has provided prior consent to  
2       receive any such notice by electronic transmission;  
3       and

4           (2) the notice is consistent with the provisions  
5       permitting electronic transmission of notices under  
6       section 101 of the Electronic Signatures in Global  
7       and National Commerce Act.

8   **SEC. 5. MITIGATION PROCEDURES.**

9       (a) **FREE FILE MONITORING.**—Any financial institu-  
10   tion that is required to provide notice to a consumer under  
11   section 4(a)(1) with respect to a breach of data security  
12   described in section 4(c) shall, if requested by the con-  
13   sumer before the end of the 90-day period beginning on  
14   the date of such notice, make available to the consumer,  
15   free of charge and for a 12-month period, a service that  
16   monitors nationwide credit activity regarding the con-  
17   sumer from a consumer reporting agency described in sec-  
18   tion 603(p) of the Fair Credit Reporting Act.

19       (b) **JOINT RULEMAKING FOR SAFE HARBOR.**—The  
20   Federal Trade Commission, in consultation with the regu-  
21   latory agencies described in section 8, shall develop regula-  
22   tions, which shall be prescribed by all functional regu-  
23   latory agencies, that, in any case in which—

24           (1) free file monitoring is offered under sub-  
25       section (a) to a consumer;

1           (2) subsequent to the offer, another party mis-  
2       uses sensitive financial identity information on the  
3       consumer obtained through the breach of data secu-  
4       rity (that gave rise to such offer) to commit identity  
5       theft against the consumer; and

6           (3) at the time of such breach the financial in-  
7       stitution maintained reasonable policies and proce-  
8       dures to comply with subsection (a),  
9       exempts the financial institution from any liability under  
10      State common law for any loss or harm to the consumer  
11      occurring after the end of a reasonable period beginning  
12      on the date of such offer, other than any direct pecuniary  
13      loss provided under such law, resulting from such misuse.

14      **SEC. 6. PROPER DISPOSAL OF PERSONAL INFORMATION.**

15           (a) IN GENERAL.—Before the end of the 6-month pe-  
16      riod beginning on the date of the enactment of this Act,  
17      the Federal Trade Commission shall prescribe regulations  
18      in final form requiring any financial institution which  
19      maintains or otherwise possesses sensitive financial per-  
20      sonal information, or any compilation of such information,  
21      for a business purpose to properly dispose of any such in-  
22      formation or compilation so that such information or com-  
23      pilation cannot practicably be read or reconstructed.

24           (b) RULE OF CONSTRUCTION.—No provision of this  
25      section shall be construed—

1           (1) as requiring, or authorizing the Federal  
2       Trade Commission to require, any person to main-  
3       tain or destroy any sensitive financial personal infor-  
4       mation that is not required to be maintained or de-  
5       stroyed under any other provision of Federal or  
6       State law; or

7           (2) as altering or affecting any requirement im-  
8       posed under any other provision of Federal or State  
9       law to maintain or destroy sensitive financial per-  
10      sonal information.

11 **SEC. 7. RELATION TO STATE LAW.**

12       The provisions of this Act shall supersede any law,  
13      rule, or regulation of any State or political subdivision of  
14      any State that relates in any way to—

15           (1) information security standards of financial  
16      institutions; or

17           (2) the notification of consumers by financial  
18      institutions with respect to any breach of the con-  
19      fidentiality or security of information maintained or  
20      received by or on behalf of the financial institutions.

21 **SEC. 8. ADMINISTRATIVE ENFORCEMENT.**

22       This Act and any regulation prescribed under this  
23      Act shall be enforced with respect to financial institutions  
24      and other persons to which this Act applies exclusively by  
25      the functional financial regulators, and by the chief law

1 enforcement officer of a State, or an official or agency des-  
2 ignated by a State (with respect to persons within the ju-  
3 risdiction of such officer, official, or agency), as follows:

4 (1) Under section 8 of the Federal Deposit In-  
5 surance Act, in the case of—

6 (A) national banks, Federal branches and  
7 Federal agencies of foreign banks, and any sub-  
8 sidiaries of such entities (except brokers, deal-  
9 ers, persons providing insurance, investment  
10 companies, and investment advisers), by the  
11 Comptroller of the Currency;

12 (B) member banks of the Federal Reserve  
13 System (other than national banks), branches  
14 and agencies of foreign banks (other than Fed-  
15 eral branches, Federal agencies, and insured  
16 State branches of foreign banks), commercial  
17 lending companies owned or controlled by for-  
18 eign banks, organizations operating under sec-  
19 tion 25 or 25A of the Federal Reserve Act, and  
20 bank holding companies and their nonbank sub-  
21 sidiaries or affiliates (except brokers, dealers,  
22 persons providing insurance, investment compa-  
23 nies, and investment advisers), by the Board of  
24 Governors of the Federal Reserve System;

1 (C) banks insured by the Federal Deposit  
2 Insurance Corporation (other than members of  
3 the Federal Reserve System), insured State  
4 branches of foreign banks, and any subsidiaries  
5 of such entities (except brokers, dealers, per-  
6 sons providing insurance, investment compa-  
7 nies, and investment advisers), by the Board of  
8 Directors of the Federal Deposit Insurance Cor-  
9 poration; and

10 (D) savings associations the deposits of  
11 which are insured by the Federal Deposit In-  
12 surance Corporation, and any subsidiaries of  
13 such savings associations (except brokers, deal-  
14 ers, persons providing insurance, investment  
15 companies, and investment advisers), by the Di-  
16 rector of the Office of Thrift Supervision.

17 (2) Under the Federal Credit Union Act, by the  
18 Board of the National Credit Union Administration  
19 with respect to any federally insured credit union,  
20 and any subsidiaries of such an entity.

21 (3) Under the Securities Exchange Act of 1934,  
22 by the Securities and Exchange Commission with re-  
23 spect to any broker or dealer.

1           (4) Under the Investment Company Act of  
2           1940, by the Securities and Exchange Commission  
3           with respect to investment companies.

4           (5) Under the Investment Advisers Act of 1940,  
5           by the Securities and Exchange Commission with re-  
6           spect to investment advisers registered with the  
7           Commission under such Act.

8           (6) Under State insurance law, in the case of  
9           any person engaged in the business of insurance, by  
10          the applicable State insurance authority of the State  
11          in which the person is domiciled.

12          (7) Under the Federal Trade Commission Act,  
13          by the Federal Trade Commission for any other per-  
14          son that is not subject to the jurisdiction of any  
15          agency or authority under paragraphs (1) through  
16          (6) of this subsection.

17 **SEC. 9. DEFINITIONS.**

18          For purposes of this Act, the following definitions  
19          shall apply:

20               (1) **BREACH OF DATA SECURITY.**—The term  
21               “breach of data security” means, with respect to  
22               sensitive financial personal information that is main-  
23               tained, received, or communicated by or on behalf of  
24               any financial institution—

1 (A) an unauthorized acquisition of such in-  
2 formation that could be used to commit finan-  
3 cial fraud; or

4 (B) an unusual pattern of misuse of such  
5 information to commit financial fraud.

6 (2) CONSUMER.—The term “consumer” means  
7 an individual.

8 (3) FINANCIAL INSTITUTION.—The term “fi-  
9 nancial institution” means—

10 (A) any person the business of which is en-  
11 gaging in activities that are financial in nature  
12 as described in or determined under section  
13 4(k) of the Bank Holding Company Act;

14 (B) any entity that is primarily engaged in  
15 activities that are subject to the Fair Credit Re-  
16 porting Act; and

17 (C) any person that is maintaining, receiv-  
18 ing, or communicating sensitive financial per-  
19 sonal information on an ongoing basis for the  
20 purposes of engaging in interstate commerce.

21 (4) FUNCTIONAL FINANCIAL REGULATOR.—The  
22 term “functional financial regulator”—

23 (A) has the same meaning as in section  
24 509(2) of the Gramm-Leach-Bliley Act; and

1 (B) in the case of any financial institution  
2 that is described in paragraph (3)(B) that is  
3 not subject to the Gramm-Leach-Bliley Act, in-  
4 cludes the appropriate regulator for such finan-  
5 cial institution under section 621 of the Fair  
6 Credit Reporting Act.

7 (5) SENSITIVE FINANCIAL PERSONAL INFORMA-  
8 TION.—

9 (A) IN GENERAL.—The term “sensitive fi-  
10 nancial personal information” means informa-  
11 tion that is personal, sensitive, and nonpublic  
12 and contains an individual’s first and last name  
13 and either the individual’s address or telephone  
14 number and appears in combination with any of  
15 the following:

16 (i) Social Security number.

17 (ii) Driver’s license number or an  
18 equivalent State-issued identification num-  
19 ber.

20 (iii) Taxpayer identification number.

21 (iv) Any credit card or debit card ac-  
22 count number.

23 (v) Any bank, savings association,  
24 credit union, or investment account num-  
25 ber, other than an account number de-



1           scribed in clause (iv), in combination with  
2           any required security code, biometric code,  
3           password, or other means that would per-  
4           mit access to a consumer’s financial ac-  
5           count.

6           (B) EXCLUSIONS.—The term “sensitive fi-  
7           nancial personal information” shall not in-  
8           clude—

9                   (i) any list, description or other  
10                  grouping of individuals (and publicly avail-  
11                  able information pertaining to them) that  
12                  is derived without using any sensitive per-  
13                  sonal information; or

14                  (ii) publicly available information that  
15                  is lawfully made available to the general  
16                  public from Federal, State or local govern-  
17                  ment records.

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